

Exhibit D

(B. Guimberteau Dep. (Sept. 14, 2022) transcript excerpts)

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3

4 -----x

5 HERMÉS INTERNATIONAL, and

6 HERMÉS OF PARIS,

7 Plaintiffs,

8 vs. Case No. 1:22-cv-00384

9 MASON ROTHSCHILD,

10 Defendant.
11 -----x

12 "CONFIDENTIAL"

13 VIDEOTAPE DEPOSITION OF

14 BORIANA GUIMBERTEAU

15 VIA ZOOM VIDEOCONFERENCE

16 September 14, 2022

17 4:00 p.m. CEST
18
19
20
21
22

23 CASE NO. 5461948

24 Reported by:

25 Maureen Ratto, RPR, CCR

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* * *

Videotape deposition of BORIANA
GUIMBERTEAU held virtually via Zoom
Teleconference, hosted from Veritext
Legal Solutions, pursuant to notice,
before Maureen Ratto, Certified Court
Reporter, License No. XI01165,
Registered Professional Reporter,
License No. 817125, and Notary Public.

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A P P E A R A N C E S:

Counsel for the Plaintiff:

BAKER HOSTETLER, LLP

600 Anton Boulevard

Costa Mesa, California 92626

BY: GERALD FERGUSON, ESQ.

gferguson@bakerlaw.com

FRANCESCA ROGO, ESQ.

Frogo@bakerlaw.com

BAKER HOSTETLER, LLP

1735 Market Street

Philadelphia, Pennsylvania 19104

BY: FRANCESCA ROGO, ESQ.

Frogo@bakerlaw.com

LISA BOLLINGER GEHMAN, ESQ.

lgehman@bakerlaw.com

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1 A P P E A R A N C E S , continued:

2

3 Counsel for the Defendant:

4 LEX LUMINA, PLLC

5 745 Fifth Avenue

6 New York, New York 10151

7 BY: RHETT O. MILLSAPS, II, ESQ.

8 rhett@lex-lumina.com

9 CHRISTOPHER J. SPRIGMAN, ESQ.

10 Chris@lex-lumina.com

11

12 ALSO PRESENT:

13 VALENTINE FADIE, Hermés International

14 HOWARD BRODSKY, Legal Video Specialist

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2 the court reporter shall enter all

3 appearances for this proceeding

4 into the stenographic court record

5 and have further stipulated and

6 agreed that the court reporter may

7 take the deponent's oath remotely.

8 Will the court reporter please

9 swear in the witness.

10 * * *

11 B O R I A N A G U I M B E R T E A U ,

12 having been first duly sworn according

13 to law by the Officer, testifies as

14 follows:

15 DIRECT EXAMINATION BY MR. FERGUSON:

16 Q. Good afternoon. Can you please

17 state your name for the record?

18 A. Yes. My name is Boriana

19 Guimberteau.

20 Q. What is your profession,

21 Ms. Guimberteau?

22 A. I am an attorney, a lawyer in

23 France.

24 Q. And where do you live?

25 A. In Paris, France.

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2 Q. What firm employs you?

3 A. I work for the firm Stephenson
4 Harwood.

5 Q. What is your area of
6 specialization at your law firm?

7 A. I am specializing in
8 intellectual property law.

9 Q. Do you provide legal services
10 to the company Hermés?

11 A. No.

12 Q. As far as you're aware does
13 your law firm provide legal services to
14 the company Hermés?

15 A. No.

16 Q. Are you aware of a NFT called
17 the Baby Birkin?

18 A. Yes, I am.

19 Q. To the best of your
20 recollection, when did you first become
21 aware of a NFT called the Baby Birkin?

22 A. I became aware of this NFT
23 when I was presenting -- preparing a
24 presentation for the French group of the
25 AIPPI, an association specialized in

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2 intellectual property, here in Paris,
3 France at the end of 2021.

4 Q. How did you become aware of
5 the NFT called the Baby Birkin?

6 A. Through my searches on the
7 internet.

8 Q. Did you find any news articles
9 or other publications discussing the Baby
10 Birkin through your research on the
11 internet?

12 A. Yes. I found some articles on
13 the internet.

14 Q. I'm going to show you what we
15 have premarked as Exhibit 104. It's Bates
16 stamped GUIMBERTEAU_00070 and it's an
17 article entitled 2021 The Year of Fashion
18 NFTs.

19 (Exhibit 104, article entitled
20 2021 The Year of Fashion NFTs,
21 Bates GUIMBERTEAU_00070 was
22 received and marked on this date
23 for identification.)

24 Q. Do you recognize this article?

25 A. Yes, I do.

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2 leave somebody using its trademarks and
3 its products without authorization,
4 without any partnership or consent, and
5 second of all, under this image we see
6 "Image Courtesy of Hermés".

7 (Reporter clarification.)

8 A. The text indication, they
9 mention "Image Courtesy of Hermés" which
10 for me means that Hermés has provided
11 this image that we see here on the
12 screen.

13 Q. Did there come a time when you
14 became aware of NFTs called the
15 MetaBirkins?

16 A. Well, it was approximately at
17 the same time while preparing the
18 presentation for the AIPPI group.

19 Q. And did you become aware of
20 the MetaBirkins' NFTs through your
21 research and articles that you read
22 online?

23 A. Yes.

24 Q. At the time you became aware
25 of the MetaBirkin's NFTs, did you have an

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2 understanding as to whether Hermés had
3 any role in issuing those NFTs?

4 A. Well, for me it was the same
5 thing as for the Baby Birkin, as it was
6 related to Hermés, it was necessarily
7 with Hermés' agreement.

8 Q. I'm going to show you what we
9 have marked as Exhibit 105, it's Bates
10 stamped GUIMBERTEAU_000037. I'm going to
11 ask, can you identify this document for
12 me?

13 (Exhibit 105, presentation by
14 to AIPPI Borianana Guimberteau, Bates
15 GUIMBERTEAU_000037 was received and
16 marked on this date for
17 identification.)

18 A. Yes. This is the presentation
19 that I gave to the French group of AIPPI.
20 This is the first page.

21 Q. Okay. What was the topic of
22 this presentation?

23 A. It was a NFT. It was on NFTs
24 in the -- it was on NFTs in the art and
25 luxury sectors.

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2 France.

3 Q. You're required to do the
4 affidavit in France?

5 A. No. No.

6 Q. Okay. So why did you decide to
7 submit an affidavit?

8 A. Well, because I did not see
9 what would be the problem with that.

10 Q. Have you ever at any time
11 provided any services to Hermès?

12 A. No.

13 Q. Has your firm ever at any time
14 provided services to Hermès?

15 A. No.

16 Q. Do you provide services to
17 other luxury fashion brands?

18 A. Yes.

19 Q. And who are those?

20 A. [REDACTED] [REDACTED] [REDACTED] [REDACTED]

21 Q. Any others?

22 A. No.

23 Q. Has your firm provided
24 services to other luxury fashion brands?

25 A. Yes.

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2 Q. Who are those?

3 A. [REDACTED]

4 Q. Any others?

5 A. Not to my knowledge.

6 Q. Okay. Is your firm looking to
7 do business with Hermés?

8 A. No.

9 Q. Would you like to do --

10 A. Not to my knowledge.

11 Q. Okay. Would you like to do
12 business with Hermés?

13 A. Well, it is not a bad company,
14 but I'm not looking for it.

15 Q. Have you ever approached
16 Hermés about representing them in the
17 past?

18 A. No.

19 Q. Okay. What does it mean -- do
20 you describe yourself as a metaverse
21 lawyer?

22 A. I have a good knowledge of
23 these notions.

24 Q. Have you described yourself as
25 a metaverse lawyer?

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2 A. No. No. But I say that I have
3 a good knowledge in blockchain and NFTs.

4 Q. But you've never described
5 yourself as a metaverse lawyer?

6 A. No.

7 Q. Okay. And how do you have a
8 good knowledge of NFTs?

9 A. Because with my previous firm
10 in 2018 we've launched a platform based
11 on blockchain technology that we offer to
12 our clients and last year naturally I
13 started also getting interested in NFTs
14 and following all the movement around
15 that, so that's how.

16 Q. What was that platform called?

17 A. FTPA Avocats.

18 Q. Could you spell that last?

19 A. FTPA is the name of my
20 previous firm, and FTPA Blockchain, I
21 think they've changed the name.

22 Q. How long were you with FTPA?

23 A. For 17 years.

24 Q. Has FTPA ever done any work
25 for Hermés?

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2 A. No.

3 Q. Has FTPA done work for other
4 luxury fashion brands?

5 A. Yes.

6 Q. What brands?

7 A. [REDACTED] [REDACTED].

8 Q. Any others?

9 A. Not to my knowledge. Maybe
10 some of the partners, I don't know.

11 Q. Were you a partner at FTPA?

12 A. Yes.

13 Q. Why did you leave FTPA?

14 A. Because I found a better
15 opportunity with Stephenson Harwood.
16 It's a more international firm.

17 Q. Are you qualified to practice
18 law in the United States?

19 A. No.

20 Q. Have you studied U.S. law?

21 A. No.

22 Q. Did anyone tell you that Baby
23 Birkin was created by Hermès?

24 A. No.

25 Q. Did anyone tell you that

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2 testified that you believed that Baby
3 Birkin was necessarily authorized by
4 Hermés because it's related to a Hermés
5 product; is that right?

6 A. Yes.

7 MR. FERGUSON: Objection.

8 Q. Do you know if it's the law in
9 the United States that something must be
10 authorized by -- I'm sorry. Let me
11 withdraw that and rephrase it.

12 Do you know if the law in the
13 United States requires an artist to get a
14 brand's permission before that artist
15 depicts one of the brand's products?

16 MR. FERGUSON: Objection. You
17 can answer.

18 MR. MILLSAPS: What is your
19 objection?

20 MR. FERGUSON: It's outside
21 the scope of direct. This is
22 cross-examination. And also, she's
23 already testified she's not a --
24 she hasn't studied law and you're
25 asking her opinion on U.S. law.

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2 MR. MILLSAPS: I'm asking if
3 it's her understanding.

4 MR. FERGUSON: Same objection.
5 You can answer.

6 A. I don't have knowledge of U.S.
7 law, so I cannot answer.

8 Q. I'm just checking my notes of
9 the documents that were produced
10 yesterday evening.

11 Is there anything else on
12 which you based your conclusion that Baby
13 Birkin was authorized by Hermés than what
14 you've said today?

15 MR. FERGUSON: Objection. You
16 can answer.

17 A. Well, no. I think I explained
18 the reasons.

19 MR. MILLSAPS: Jerry, what is
20 the objection to that question?

21 MR. FERGUSON: I thought it
22 was vague.

23 MR. MILLSAPS: Okay.

24 Q. Other than what you've
25 testified here today, is there anything

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2 else on which you based your conclusion
3 that MetaBirkins was authorized by
4 Hermés?

5 A. Well, beside it has the
6 trademark Birkin and the shape of the
7 product, I think -- and what I already
8 explained, I think that would be the
9 reason why.

10 Q. Okay. And there is no other
11 reason?

12 A. No.

13 MR. MILLSAPS: Okay. We have
14 no further questions for this
15 witness. Thank you very much.

16 MR. FERGUSON: Thank you very
17 much for your time, Ms.
18 Guimberteau.

19 One piece of housekeeping
20 before you went off the record. You
21 mentioned some client names in
22 response to questions. We could
23 have this transcript designated as
24 "Confidential" if you would
25 consider that information to be